1. CF 601 (3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR [C.G.]

SECOND APPEAL No. 500 / 2005

Single Bench

APPELLANT

PLAINTIFF

1.Rasmaniya D/o Jaypal Aged- about 60 yrs. 2.Budi D/o Jaypal W/o faagu Aged-about 55 years

3.Gaalo D/o Jaypal W/o Vishambhar, Aged-about 58 years

All are R/o Village- Bhagawan pur, Thana- Chalgali, Tahsil-Wadraf Nagar, Distt.- Sarguja [C.G.].

P.R. No. 2871/05 Presented by S.K. Gupta dated 09/11/05

VERSUS

RESPONDENT :

DEFENDANT

1.Kanchan D/o Jaypal, Aged- about 60yrs. 2. Andhari D/o Jaypal, Aged- about 62yrs.

3.Budawa D/o Jaypal, Aged- about 50yrs. All are the R/o Village- Bhagawan pur, Thana- Chalgali, Tahsil-Wadraf Nagar, Distt.- Sarguja [C.G.].

4.Runiya D/o Budhdhu @ Shudhdhu Aged-about 30 years R/o Village- Bhagawan pur, Thana- Chalgali, Tahsil-Wadraf Nagar, Distt.- Sarguja [C.G.].

5. State of Chhattisgarh, Through- Collector Sarguja [C.G.].

RE-COPY 8/11/05 CLERK TO A.G. BILASPUR

SECOND APPEAL UNDER SECTION 100 THE CIVIL PROCEDURE CODE

XI-HC-22

(14)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक S.A. 500 सन् 2005

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

25.04.2006

Shri Arun Shukla, learned counsel for the appellants.
Shri Akhil Agrawal, learned P.L. for the State/respondent.

Heard on admission.

2. The instant civil appeal under Section 100 of the Code of Civil Procedure has been preferred by the appellants/plaintiffs as they are aggrieved by the impugned judgment and decree dated 29.07.2005 passed by learned Additional District Judge (FTC), Ramanujgang, Sarguja in Civil Appeal No. 96-A/02 and by which the appeal preferred by the appellants/plaintiffs against the judgment and decree dated 18.03.1999 passed in C.S.No. 56-A/96 by learned Civil Judge, Class-I, Ramanujgang, has been dismissed and the judgment and decree passed by the learned Civil Judge has been confirmed. (Parties hereinafter shall be referred to as per their description before the trial Court)

3. The plaintiffs filed a civil suit for declaration of title, perpetual injunction and cancellation of gift deed. The case of the plaintiffs before the trial Court was that the parties to the suit are descendants of the same parents and they were residing with their parents as "*Ghar Jamai*". The suit property described in schedule 'A' was orally partitioned between the plaintiffs and the defendants by their mother Chando Bai and since then they were in possession of their respective shares and cultivating independently. However, the defendants got their names mutated over the suit property by practicing fraud on the basis of fabricated gift deed

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मामला क्रमांक S.A. 500 सन् 2005

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

dated 06.09.1994 and after getting their names mutated they were trying to get forcible possession of the suit land.

4. The defendants in their written statements denied the averments in the plaint and stated that plaintiffs No. 1, 2 & 3 and defendants No. 1, 2 & 3 belonged to the same family whereas plaintiff No. 4 (defendant No. 4 herein) is not the member of this family. It was also denied that the plaintiffs and the defendants resided together with their parents jointly. It was averred that the plaintiffs are residing in their matrimonial houses after their marriage and only defendant No. 2 is residing in village – Bhagwanpur. Their father late Jaipal Gond executed a registered gift deed dated 09.06.1964 in favour of defendants No. 1, 2 and 3 and since then there was no dispute between the plaintiffs and the defendants with respect to the property belonging to Jaipal Gond. It was denied that there was any partition of the suit property between the plaintiffs and the defendants as claimed in the plaint. The possession of the plaintiffs over the suit property was denied and it was averred that in fact the defendants are in peaceful possession over the suit property on the basis of gift deed executed by their father Jaipal Gond.

5. On the basis of pleadings of the respective parties, the learned trial Court framed issues and after recording evidence dismissed the suit of the plaintiffs by recording a finding that the plaintiffs have failed to prove that they are the owner and possessor of the suit property, they were threatened by the defendants to be dispossessed from the suit property and they have also failed to prove that they are entitled for a decree of

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

perpetual injunction. It was also held that the plaintiffs have failed to prove that the gift deed dated 08.09.1994 as alleged in the plaint, was illegal and the suit filed by them was ~~not~~ barred by law of limitation. Accordingly, the suit of the plaintiffs was dismissed by the trial Court with cost.

6. The plaintiffs preferred appeal before the learned Additional District Judge which was also dismissed with an identical finding.

7. The instant appeal has been preferred by the plaintiffs on the following substantial questions of law;

1. "Whether both the Courts below were correct in holding that the suit is time barred?"
2. "Whether both the Courts below were correct in passing the impugned judgment and decree holding that the father Jaipal executed *Bakshishnama* in favour of Budhmaniya, without making any issue with regard to the execution of *Bakshishnama* by Jaipal and that the Budhmaniya and Ruchan is the same person, without there being any evidence?"

8. Learned counsel for the appellants/plaintiffs submits that from perusal of the gift deed it is evident that the same was allegedly executed by thier father late Jaipal Gond in favour of Budhmaniya. However, the Courts below have held that Budhmaniya and Ruchan are the same person though no issue was framed by the trial Court, therefore, finding of

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 4 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

both the Courts below in this regard is erroneous and substantial question No. 2 as proposed, is made out for adjudication of this appeal.

9. Learned trial Court while dealing with issue No. 5 - whether the suit filed by the plaintiffs is barred by law of limitation, has answered in the affirmative by recording a finding inter alia that the plaintiff witness No. 1 namely Galo has admitted in her cross examination that her father had executed the sale deed with respect to the whole land in his life time and in pursuance of that their names were mutated and at that time she was present there along with all of her sisters. The plaintiff has also admitted that land revenue is being paid by the defendants since last 20-25 years and they are in possession of the suit land. Similar is the statement of Runiya (Plaintiffs' Witness No.2). On the basis of statements of the witnesses the learned Civil Judge has arrived at the conclusion that the sale deed was executed on 09.06.1964, the names of the defendants continued to be recorded in the revenue records since 25.03.1965 and the plaintiffs were aware of the above transaction from the inception and thus they have filed the suit after 30 years of execution of the sale deed which is on the face of it barred by law of limitation. The plaintiffs were required to challenge the sale deed within three years from the date of execution. The above finding has been further confirmed in appeal by the impugned judgment whereby the learned Additional District Judge minutely discussing the evidence available on record has held that the instant suit filed by the plaintiffs was barred by law of limitation and the Court below has not committed any illegality in dismissing the suit.

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आदेश पत्रक

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	10. So far as the second substantial question of law as proposed by counsel for the appellants/plaintiffs is concerned, both the Courts below on the basis of evidence available on record have recorded a finding of fact that Budhmaniya in whose favour the sale deed was executed, is in fact Ruchan, therefore, this Court is of the opinion that the finding of both the Courts below that Budhmaniya and Ruchan are the same person are the finding of fact and no substantial question of law as proposed by counsel for the appellants, has been made out for adjudication of this appeal. 11. In view of the above discussions, I am of the considered opinion that the instant appeal is devoid of merits which deserves to be dismissed at the motion stage itself and accordingly, the same is dismissed. **Sd/-** **Dhirendra Mishra** **Judge**	

Khan

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